IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.148 OF 2006
WITH
CIVIL APPLICATION NO.191 OF 2006

Creation Publicity Pvt.Ltd. & ors. ..Appellants.

V/s.

The Municipal Corpn. of Gr.Mumbai & Ors...Respondents.

Mr.N.A.Modi i/b S.M.Shettiyar for appellants.

Mr.Malandkar for MMC-respondent No.1 to 4.

Smt.Sheetal Sawant for respondent Nos. 5 to 7.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 20, 2006.

P.C. :

1. Heard. Admit.

2. This Appeal from Order takes exception to the order dated 17th February, 2006 passed by the trial court refusing to grant ad-interim relief during the pendency of the Notice of Motion. As short question is involved appeal is taken up for hearing forthwith by consent. Counsel for the respective respondent waive service.

3. I shall straightaway deal with the preliminary point raised by the Respondent

Corporation. Counsel for the respondent corporation has relied on observations contained in order dated 2nd September, 2002 passed by the Division Bench of this court in Writ Petition No.1132 of 2002. The Division Bench ordered that all the suits which were pending at the relevant time before the City Civil Court, Mumbai, in relation to the subject matter of hoarding to stand transferred to the learned Single Judge, original side of this court and to be placed before the learned Judge taking notice of motion for appropriate relief. This argument however, can be considered, only if, the respondents were to take out formal application for transfer of the present suit, which is not covered by the directions of the Division Bench referred to above, as it was filed in subsequent point of time. That request will be considered, if made by the Corporation. For the time being, the plaintiff cannot be blamed for having moved the City Civil Court, which was the appropriate court to try and decide the suit for the relief claimed therein.

4. In my opinion, the appellants are entitled for ad-interim relief during the pendency of the Notice of Motion. This is so because show cause notice issued by the respondent corporation on the

basis of the order, which is impugned in the suit came to be passed on 30th November, 2005 confines the proposed action with regard to the violation of condition 16(f)-which means that hoarding put up by the plaintiff obstructs light and ventilation of the residents of the 5th floor premises. The occupant of the 5th floor premises has appeared before this court(who is defendant in the suit) through counsel and states that no obstruction of any nature of light and ventilation is experienced by the defendant No.5 and reasons stated in the order are non-existant. As no other reason is stated in the order as passed as mentioned earlier, the appellant would be entitled for ad-interim relief till disposal of the Notice of Motion.

3. This appeal as well cognate civil application are disposed of on the above terms with liberty to the respondent to take out formal application for transfer of the suit filed by the appellants before the City Civil Court, Mumbai on the original side of this court to be placed before the learned Single Judge taking notice of Motion for appropriate relief. That application will be heard on its own merits in accordance with the law.